



Town of Arlington

REDEVELOPMENT BOARD

**Report to:
Special Town Meeting, Monday, February 12, 2018**

Voted as amended Monday, February 5, 2018

Andrew Bunnell, Chair, (Term through 01/31/2020)
Andrew West, Vice Chair, (Term through 06/30/2020)
Eugene Benson (Term through 01/31/2020)
Kin Lau (Term through 01/31/2019)
David Watson (Term through 09/22/2018)

Jennifer Raitt, Secretary Ex-Officio

This report to Town Meeting provide summary of the proposed recodification of the Town's Zoning Bylaw. Recodification includes the review and reorganization of the bylaw; the first of a two-phase process. This recodification aims to make the Zoning Bylaw easier to use while not changing the requirements therein. When the recodified bylaw is approved, a second phase will consider policy changes.

Summary

The Arlington Redevelopment Board (ARB) acts as the Town's Planning Board (Section 2 of Section 17 of the Town Manager Act), and as such is required to issue a report with recommendations to the Town Meeting on any warrant article that propose to amend the "Town of Arlington Zoning Bylaw." The ARB must first hold an advertised public hearing on a warrant article. The legal notice for the public hearing for Warrant Article 2 for Special Town Meeting (STM) appeared in the *Arlington Advocate* as required on December 14, 2017, December 21, 2017, and January 4, 2018. The public hearing for STM Article 2 was held on Monday, January 8, 2018, and continued to January 10 and January 22. At its meeting on January 22, 2018, the ARB voted on the recommended bylaw language for STM which is the replacement of the existing zoning bylaw with a proposed new bylaw. The Board's vote was unanimous (5-0) for the warrant article. The ARB's vote constitutes its recommendation and the motion that will be considered by Town Meeting.

The Final Draft of the Arlington Zoning Bylaw dated January 22, 2018 is available on the Town's website, at the Clerk's Office, at the Robbins Memorial Library Reference Desk, and at the Planning and Community Development Office counter. A companion document that provides a section by section walkthrough explaining proposed changes and why they were proposed is also available. Two additional reference documents are provided on the Town's website at www.arlingtonma.gov/ARB: a fully "redlined" Zoning Bylaw which compares the existing Zoning Bylaw to the proposed Zoning Bylaw and Zoning Bylaw Content for Board Rules and Administrative Rules.

This report to Town Meeting was approved at the February 5, 2018 ARB meeting. This report provides information about the process to develop the proposed Zoning Bylaw, including the timeline, the project team, public engagement and dialogue. This report also describes the iterative process that led to finalizing the bylaw, including how concerns have been addressed and two matters that were raised throughout the process.

Background

Arlington's Zoning Bylaw was written in 1975, and various sections have been amended by Town Meeting 442 times beginning in 1977. Over 41 years, the Redevelopment Board, citizens, staff, and others have tried to address changes in requirements, reflect local practice, and amend the bylaw to address errors. These amendments do not address the bylaw as a whole which remains challenging to use. Rules, requirements, formulas, and definitions are spread out across multiple Articles of the bylaw. Further, it is difficult to find information in the existing bylaw which helps a person understand how to use and apply the bylaw. For example, the existing bylaw often has important requirements and rules embedded in footnotes of tables, formulas and processes embedded in definitions, and definitions referenced throughout. The bylaw also needs updating to

ensure that provisions are consistent with State and land use case law as well as not in conflict with companion land use or development rules and regulations.

The Arlington Master Plan, adopted by the Arlington Redevelopment Board and endorsed at 2015 Annual Town Meeting, provides a vision, goals, and actions for implementation to advance policies that address Arlington's land use and zoning, housing, economic development, transportation, historic and cultural resources, natural resources, open space and recreation, and public facilities. The first key recommended action to advance the land use and zoning vision outlined in our Master Plan is to *"Recodify and update the Zoning Bylaw (ZBL). The text of the ZBL is not always clear, and some of the language is out of date and inconsistent. As a first step in any zoning revisions following a new master plan, communities should focus on instituting a good regulatory foundation: structure, format, ease of navigation, updated language and definitions, and statutory and case law consistency."* A fully recodified zoning bylaw will provide our community with a fresh starting place to then begin more robust changes that align our zoning with the Town goals and values established by the Master Plan.

Process, Timeline, Project Team

Following adoption of the Master Plan, the Arlington Redevelopment Board formed the Master Plan Implementation Committee (MPIC) which is composed of the following members: Joseph Barr, Andrew Bunnell, Michael Byrne, Adam Chapdelaine, Peter Howard, Charles Kalaskas, Ann Leroyer, Wendy Richter, Andrew West, and Ralph Willmer. In summer 2016, the MPIC formed four subgroups to begin to address key recommendations in the Master Plan while also being responsive to concerns that arose out of 2016 Annual Town Meeting. The Zoning Recodification Working Group (ZRWG) is a subgroup of the MPIC that is composed of the following members: Michael Byrne (Inspectional Services), Adam Chapdelaine (Town Manager), Nancy Flynn-Barvick (Town Manager appointee), Catherine Garnett (Conservation Commission), Charles Kalaskas (MPIC), Christian Klein (ZBA), Jennifer Raitt (Planning and Community Development), Stephen Revilak (Town Meeting), David Watson (ARB), and Ralph Willmer (MPIC). The Department of Planning and Community Development (DPCD) has been coordinating and staffing the process.

Since September of 2016, the ZRWG held 30 meetings. These meetings have been posted public meetings open to the public. In addition to these meetings, ZRWG volunteer members have provided approximately 1,000 hours of time toward this process both at meetings, conducting additional research, reviewing documents, and producing new documents.

The ZRWG's primary task is to oversee and help with the recodification of the zoning bylaw. This included drafting a Request for Proposals, assisting with the selection of a consultant, RKG Associates, who updated the Zoning Diagnostic (appendix to the Master Plan), facilitated meetings earlier in the process, and ultimately provided three drafts of the bylaw (one in June 2017, a second in July 2017, and a hearing draft in November 2017). Materials chronicling the recodification process are posted here: <https://www.arlingtonma.gov/town-governance/all-boards-and-committees/master-plan-implementation-committee/agendas-and-minutes/zoning-recodification-working-group>.

In order to be responsive to public requests for greater explanation and details of proposed changes, the ZRWG developed additional documents such as the “Guide to Arlington Zoning Bylaw Recodification” and planned outreach and education to assist with understanding the proposed bylaw. The “Guide” document explains where each provision in the existing bylaw appears in the new, proposed bylaw.

Public engagement and meetings included:

- Focus group meetings and interviews with 59 stakeholders, those who interface with or administer the existing Zoning Bylaw to discuss their experiences working with the bylaw;
- An “All Board” meeting in January 2017 with Town Departments, Boards, and Commissions that interface with or directly administer the Zoning Bylaw;
- Two community-wide public forums (one held in July and a second in October 2017) to explain zoning, the process, and gain feedback from the public;
- Seven Open Houses/ Office Hours at the DPCD to allow the public to ask questions, learn more about the process, and provide feedback on drafts of the bylaw;
- Four neighborhood meetings to learn about the process and to ask questions about the proposed final bylaw;
- A survey to Town Meeting Members to learn about their experiences working with the bylaw, their concerns about the process, and answer any questions; and
- Regular updates and discussions at Arlington Redevelopment Board meetings.

The Arlington Redevelopment Board posted the “Hearing Draft” on December 14, 2017. This draft was reviewed by a member of the consulting team who is a long-time land use attorney and former Assistant Attorney General, Director of Municipal Law. The public hearing notice for January 8, 2018 was issued on December 14th.

Public Comment

Beginning with the public comment portion of the January 8th meeting, the ARB heard from several members of the public and Town Meeting members who wished to have certain concerns heard as part of the process. At the same time, members of the ZRWG discovered typographical and clerical errors that needed revision. Following this hearing and the subsequent public hearing on January 10, 2018, the ARB determined that more time was needed to provide a complete draft, and directed the ZRWG and staff to address any typographical errors as well as any concerns brought up by the public. During a separate meeting of the ZRWG at which a group of concerned residents were invited to attend and participate, these matters were discussed in detail, and this meeting led to a subsequent revised version of the Hearing Draft, which was thoroughly reviewed by members of the ZRWG, staff, and ARB.

Two matters were raised throughout the recodification process: what constitutes a substantive policy issue and should the administrative rules and processes outlined in the Zoning Bylaw be moved to Board rules. We will discuss each of these matters below.

The proposed Zoning Bylaw is a reorganized version of the existing Zoning Bylaw. This means that the entire experience of using the bylaw changes for the user. The existing Zoning Bylaw requires searching across bylaw sections to determine what a property owner may or may not be able to do with their property. However, the proposed Zoning Bylaw provides structure and organization for all users, not just the regular bylaw user. The proposed bylaw contains user guides and three super-categories:

- **User Guides:** A new Table of Contents and Index are also included.
- **Basic Provisions** (Section 1: Purpose and Authority, Section 2: Definitions, and Section 3: Administration and Enforcement)
- **Districts & Uses** (Section 4: Establishment of Districts and Section 5: District Regulations)
- **Site Standards** (Section 6: Site Development Standards, Section 7: Special Permits, and Section 8: Special Regulations)

One of the goals of recodifying the bylaw is to make language throughout the bylaw more accessible to all. The proposed Zoning Bylaw contains terms and phrases that aim to be more concise without losing the meaning and intent of the existing Zoning Bylaw. For example, the following definition was edited for conciseness:

- Variance (in existing Zoning Bylaw): Such departure from the terms of this Bylaw as the ZBA, upon appeal in specific cases, is empowered to authorize under the terms of Article 10.
- Variance (in proposed Zoning Bylaw): A departure from the terms of this Bylaw as the Board of Appeals may authorize under this Bylaw and G.L. c. 40A, § 10.

Additionally, wording was changed to eliminate inconsistencies, conflicts, or obsolete provisions. Table footnotes were moved to text or tables where possible. Sections are renumbered. District and use regulations are rearranged. Many definitions are updated. New definitions are added for terms that appear in the existing Zoning Bylaw but are currently undefined. Definitions for related terms are grouped and placed in boxes, e.g., all terms associated with “building” or “use”.

Some changes were made to be consistent with State and Federal laws and up-to-date with current case laws (these decisions from court cases help establish the law, in this case M.G.L. 40A). Examples of these types of changes include but are not limited to: allowing government uses in all zoning districts; updating citations in the floodplain district and regulations; allowing religious and educational uses in all districts, in conformance with case law, known as the Dover Amendment; and updating definitions such as “family” to comply with state and federal Fair Housing laws.

Additionally, the proposed Zoning Bylaw does not contain administrative rules and processes. This content is proposed to be moved to Zoning Board of Appeals and ARB rules. It is a best practice to allow these boards to establish and update their rules and as statute allows. Moving these administrative rules and processes also will allow each board to be more responsive and could improve the special permit review process. The Redevelopment Board voted to adopt administrative rules pursuant to the Board as outlined in the existing Zoning Bylaw at their

February 5, 2018 meeting. The Zoning Board of Appeals also adopted administrative rules pursuant to their Board at their January 30, 2018 meeting.

Throughout the process, the ZRWG and ARB weighed all proposed amendments to the Zoning Bylaw. When a proposed amendment appeared to border on a substantive policy issue, such as removing the Sign section from the zoning bylaw and consolidating it in with the Sign section in the Town Bylaws, the group as a whole decided not to proceed with an amendment. An amendment that would alter an outcome *and* was not required under State law, to be up-to-date with current case law, for internal consistency, or to consolidate requirements, would then constitute a policy change.

VOTED: That the Zoning Bylaw be and hereby is amended by:

1. re-organizing, re-positioning, re-captioning and re-numbering portions of the Zoning Bylaw to enhance accessibility and adaptability;
2. updating and clarifying the purpose and authority of the Zoning Bylaw to clearly state the Town's legal and factual premises for zoning regulations;
3. improving definitions to more clearly describe zoning districts, uses, and requirements;
4. providing greater consistency with present State law;
5. eliminating redundant or unnecessary provisions; making amendments such as correcting spelling and typographical errors, and eliminating or updating outdated statutory references;
6. revising, re-organizing and clarifying Zoning Bylaw administrative provisions; and
7. making other amendments for clarification and consistency;
and by taking the following actions:

1. Deleting in their entirety the following provisions and all their subparts of the existing Zoning Bylaw:

Article 1: Title, Authority, and Purpose;
Article 2: Definitions;
Article 3: Establishment of Districts;
Article 4: Interpretation and Application;
Article 5: Use Regulation;
Article 6: Dimensional and Density Regulations;
Article 7: Signs;
Article 8: Off-Street Parking and Loading Regulations;
Article 9: Nonconforming Uses, Structures, and Lots;
Article 10: Administration and Enforcement;
Article 11: Special Regulations;
Article 12: Amendment, Validity, and Effective Date; and

2. Substituting the following provisions and their subparts in the document entitled “Proposed Amended Zoning Bylaw, dated January 22, 2018” on file in the office of the Town Clerk and the Department of Planning and Community Development:

Section 1	Purpose and Authority;
Section 2	Definitions;
Section 3	Administration and Enforcement;
Section 4	Establishment of Districts;
Section 5	District Regulations;
Section 6	Site Development Standards;
Section 7	Special Permits;
Section 8	Special Regulations;

3. And by taking any action related thereto.

(5-0)

Comment:

The Redevelopment Board voted* unanimously (5-0) to recommend Article 2 as outlined in the Warrant as amended to Special Town Meeting. Eugene Benson made the motion and Kin Lau seconded the motion. The Board noted that zoning recodification should be focused on at a Special Town Meeting because it deserves special attention and to allow for a broad discussion. Board members expressed their desire to move this forward to Town Meeting and confidence in the continued outreach and engagement efforts of the ZRWG and staff to help educate Town Meeting Members about the material that will be discussed. Board members also responded to concern that there are still outstanding issues to be addressed; these issues have been addressed. The remaining concerns spotlight points of disagreement or a difference of opinion. Town Meeting also may have a difference of opinion on these remaining issues.

**At their meeting on February 5, 2018, the Board voted unanimously (5-0) on an amendment to this vote for Town Meeting’s consideration to address some concerns received by residents and staff which include additional clarifications, corrections, and removal of a provision in 8.1.7(B) regarding the authority of the Zoning Board of Appeals because it was viewed as a departure from the intention of the recodification process. These amendments are not included here in the interest of providing a single document for all proposed amendments to be based upon. Timing did not allow these corrections to be included in the vote on January 22, 2018. Kin Lau made the motion and David Watson seconded the motion. The motion the Board intends to introduce follows this report.*

-- End of Report --

ARLINGTON SPECIAL TOWN MEETING

Special Town Meeting Article 2 - Amendment

VOTED: to amend the recommended vote of the Arlington Redevelopment Board under Article 2 of the Special Town Meeting, in nine parts as follows:

First, that the word “licensed” be stricken the residential “Class of Use” in the proposed Table 5.4.3 (sec. 5-19), as follows:

“Residential ~~Licensed~~ single -room occupancy building”

and;

Second, that the proposed Section 5.4.2, Table of Dimensional and Density Regulations for residential districts (sec. 5-16) be revised in relevant part by striking the maximum height, height in stories, and FAR values for “R7 Accessory Buildings and garage structures” and replacing with the values of “20,” “2,” and “----” as follows:

<i>R7</i>			
<i>Accessory buildings and garage structures</i>	---- <i>20</i>	20 <i>2</i>	20 <i>----</i>

and;

Third, that the proposed Table of District Building Height and Floor Area Ratio Regulations for residential districts (5-16) be revised in relevant parts with respect to Accessory structures and private garages, and Minor accessory buildings and for the R0, R1, and R2 District Uses, so as to strike any and all maximum height, height in stories, and FAR values in the “R0, R1, R2,” row; reorder the arrangement of the district uses, and insert the values of “7,” “1,” and “----” for “Minor Accessory buildings less than or equal to 80 square feet, and “20,” “2” and “----” respectively as maximum height, height in stories, and FAR values, as follows:

<i>R0, R1, R2</i>			
<i>Accessory structures (> 80 sq. ft.) and private garages</i>	<i>20</i>	<i>2</i>	<i>----</i>
<i>Minor accessory building (<=80 sq. ft.)</i>	<i>7</i>	<i>1</i>	<i>----</i>

Fourth, that the table of District Building Height and Floor Area Ratio Regulations for Business Districts be revised in relevant part to delete the reference to a subsection “(C)” with respect to Maximum height in stories for “Mixed-use>20,000 sq. ft.” so as to read as follows:

<i>B2</i>			
<i>Mixed-use <= 20,000 sq. ft.</i>	<i>50</i>	<i>4*</i>	<i>1.50</i>
<i>Mixed-use>20,000 sq. ft.</i>	<i>40</i>	<i>3</i> <i>*See Sec</i> <i>5.3.17(C)</i>	<i>1.00</i>

Fifth, that the “Index” (page “Index/i”) be revised by striking the term and line “Apartment House:,2-5”

and;

Sixth, that section 8.1.7(B) (“Special Regulations/8-3”), be revised by striking the clause “; however, the Board of Appeals may grant a special permit to authorize the reestablishment of a nonconforming use or structure where such reestablishment shall not result in substantial detriment to the neighborhood,” and inserting a period mark after the word “Bylaw,” as follows:

“Any nonconforming use of a conforming structure and lot which has been abandoned, demolished without reconstruction, or not used for a continuous period of two years, shall lose its protected status and be subject to all provisions of this Bylaw.~~; however, the Board of Appeals may grant a special permit to authorize the reestablishment of a nonconforming use or structure where such reestablishment shall not result in substantial detriment to the neighborhood.~~ The abandonment period for agriculture, horticulture, or floriculture shall be five years.”

and;

Seventh, revise section 5.6.2.(A) Dimensional and Density Regulations, Tables of Dimensional and Density Regulations “Other District Lot Regulations” (5-35), so as to strike the term “/Lot Width” from the “Minimum Lot Frontage (ft) column,” as follows:

“Minimum Lot Frontage (ft)/~~Lot Width~~”

and;

Eighth, revise the heading for the “R District Open Space and Lot Coverage Regulations” table (5-15) to add the following language: “and 5.3.13(B)” after the reference to 5.4.2(B) as follows:

“R District Open Space and Lot Coverage Regulations (see 5.4.2(B) and 5.3.13(B) for exceptions).”

and;

Ninth, revise Section 5.7.3(A) to strike Section 5.8 as follows:

Any proposed use, structure, development, filling, grading, or excavation within the Floodplain District shall be governed by all regulations of this Section 5.78, G.L. c. 131, §40, Wetlands Protection Regulations of the Town Bylaws (Title V, Article 8), Department of Environmental Protection (DEP) 310 CMR 10.00, Inland Wetlands Restriction (DEP) 310 CMR 13.00, and the section of the State Building Code that addresses floodplain areas, and shall require a building permit.

Submitted by:

/S

Andrew Bunnell
Andrew West
Eugene Benson
Kin Lau
David Watson

Approved and submitted by the Arlington
Redevelopment Board